

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

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|--------------------------|---|-------------------------|
| SANDRA ANN GILMORE | § | |
| VS | § | CIVIL NUMBER: 1:06CV126 |
| UNITED STATES OF AMERICA | § | |

MEMORANDUM ORDER OVERRULING MOVANT'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Sandra Gilmore, proceeding *pro se*, filed this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The court previously referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning the motion to vacate. The magistrate judge recommends the motion to vacate be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Movant filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. The magistrate judge correctly concluded that a waiver contained in movant's plea agreement bars her from seeking collateral relief with respect to her conviction. Movant's reliance upon an earlier order of this court is misplaced. Since the date of that order it has become clear that the sentencing court may find facts under a preponderance of the evidence standard in adjusting a guideline range upward. *See United States v. Duhon*, 440 F.3d 711, 715-16 (5th Cir. 2006).

ORDER

Accordingly, movant's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered denying the motion to vacate.

So **ORDERED** and **SIGNED** this **2** day of **May, 2006**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge